

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIMBERLY ANN SMITH,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

NO. C12-1812-JCC-JPD

REPORT AND
RECOMMENDATION

Plaintiff Kimberly Ann Smith appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”), which denied her application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-83f, after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Court recommends that the Commissioner’s decision be reversed and remanded for further administrative proceedings.

I. FACTS AND PROCEDURAL HISTORY

At the time of the administrative hearing, Plaintiff was a 47-year-old woman with a high school education. Administrative Record (“AR”) at 54, 182. Her past work experience

1 includes employment as a home health provider, small product assembler, and semiconductor
2 bonder. AR at 91, 178. Plaintiff was last gainfully employed in 2008. AR at 178.

3 On April 20, 2009, Plaintiff filed a claim for SSI payments.¹ AR at 159-62. Plaintiff
4 asserts that she is disabled due to depression, left hip impairment, diabetes, anxiety, blocked
5 arteries, and a bad heart valve. AR at 177, 211, 221.

6 The Commissioner denied Plaintiff's claim initially and on reconsideration. AR at 100-
7 03, 105-06. Plaintiff requested a hearing (AR at 107-08), which took place on June 13, 2011.
8 AR at 46-97. On July 14, 2011, the ALJ issued a decision finding Plaintiff not disabled and
9 denied benefits based on his finding that Plaintiff could perform her past work. AR at 25-40.
10 Plaintiff's administrative appeal of the ALJ's decision was denied by the Appeals Council, AR
11 at 1-6, making the ALJ's ruling the "final decision" of the Commissioner as that term is
12 defined by 42 U.S.C. § 405(g). On October 16, 2012, Plaintiff timely filed the present action
13 challenging the Commissioner's decision. Dkt. 1, 3.

14 II. JURISDICTION

15 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§
16 405(g) and 1383(c)(3).

17 III. STANDARD OF REVIEW

18 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
19 social security benefits when the ALJ's findings are based on legal error or not supported by
20 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th

21 ¹ Though Plaintiff requested that a prior application for Disability Insurance Benefits
22 ("DIB") be reopened, the ALJ declined to do so. AR at 25, 53. Though Plaintiff requests that
23 on remand, her record should be supplemented with documentation related to her DIB
24 application, she does not specifically argue that the ALJ erred in declining to reopen the
application. Dkt. 17 at 1-2. In the absence of an assignment of error and a showing that the
ALJ erred in declining to reopen the prior DIB application, the Court will not instruct the ALJ
to reopen that application on remand.

1 Cir. 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is
 2 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 3 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750
 4 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in
 5 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,
 6 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a
 7 whole, it may neither reweigh the evidence nor substitute its judgment for that of the
 8 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
 9 susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that
 10 must be upheld. *Id.*

11 The Court may direct an award of benefits where “the record has been fully developed
 12 and further administrative proceedings would serve no useful purpose.” *McCartey v.*
 13 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen v. Chater*, 80 F.3d 1273, 1292
 14 (9th Cir. 1996)). The Court may find that this occurs when:

15 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the
 16 claimant’s evidence; (2) there are no outstanding issues that must be resolved
 17 before a determination of disability can be made; and (3) it is clear from the
 record that the ALJ would be required to find the claimant disabled if he
 considered the claimant’s evidence.

18 *Id.* at 1076-77; *see also Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (noting that
 19 erroneously rejected evidence may be credited when all three elements are met).

20 IV. EVALUATING DISABILITY

21 As the claimant, Ms. Smith bears the burden of proving that she is disabled within the
 22 meaning of the Social Security Act (the “Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
 23 Cir. 1999) (internal citations omitted). The Act defines disability as the “inability to engage in
 24 any substantial gainful activity” due to a physical or mental impairment which has lasted, or is

1 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§
2 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments
3 are of such severity that she is unable to do her previous work, and cannot, considering her age,
4 education, and work experience, engage in any other substantial gainful activity existing in the
5 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-
6 99 (9th Cir. 1999).

7 The Commissioner has established a five step sequential evaluation process for
8 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
9 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
10 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at
11 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step
12 one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R.
13 §§ 404.1520(b), 416.920(b).² If she is, disability benefits are denied. If she is not, the
14 Commissioner proceeds to step two. At step two, the claimant must establish that she has one
15 or more medically severe impairments, or combination of impairments, that limit her physical
16 or mental ability to do basic work activities. If the claimant does not have such impairments,
17 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
18 impairment, the Commissioner moves to step three to determine whether the impairment meets
19 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
20 416.920(d). A claimant whose impairment meets or equals one of the listings for the required
21 twelve-month duration requirement is disabled. *Id.*

22
23 ² Substantial gainful activity is work activity that is both substantial, i.e., involves
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §
404.1572.

When the claimant's impairment neither meets nor equals one of the impairments listed in the regulations, the Commissioner must proceed to step four and evaluate the claimant's residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the Commissioner evaluates the physical and mental demands of the claimant's past relevant work to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant is able to perform her past relevant work, she is not disabled; if the opposite is true, then the burden shifts to the Commissioner at step five to show that the claimant can perform other work that exists in significant numbers in the national economy, taking into consideration the claimant's RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable to perform other work, then the claimant is found disabled and benefits may be awarded.

V. DECISION BELOW

On July 14, 2011, the ALJ issued a decision finding the following:

1. The claimant has not engaged in substantial gainful activity since April 20, 2009, the application date.
2. The claimant's obesity, degenerative disc disease of the thoracic spine, diabetes mellitus under poor control, hypertension, depression, and anxiety are severe impairments.
3. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.
4. The claimant has the residual functional capacity ("RFC") to perform sedentary work as defined in 20 C.F.R. § 416.967(a). She can lift and carry ten pounds occasionally and less than ten pounds frequently; stand and/or walk for at least two hours in an eight-hour workday; sit for six hours in an eight hour workday; and push and/or pull, including operation of foot and hand controls, without limitation other than as indicated for lifting and carrying. The claimant can occasionally balance, stoop, kneel, crouch, crawl, and climb ramps and stairs, with

no climbing of ladders, ropes and scaffolds. She has no manipulative, visual, communicative, or environmental limitations. In addition, the claimant has the mental capability to adequately perform the mental activities generally required by competitive, remunerative work as follows: she can understand, remember, and carry out simple 1 to 2 step instructions required of jobs classified at a level of SVP 1 and 2 or unskilled work. She would have average or moderate ability to perform sustained work activities (i.e., can maintain attention and concentration, persistence, and pace) in an ordinary work setting on a regular and continuing basis (i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule) within customary tolerances of employers rules regarding sick leave and absence. The claimant can make judgments on simple work related decisions, respond appropriately to supervision and coworkers, and deal with changes all within a stable work environment.

5. The claimant is capable of performing past relevant work as a semiconductor bonder.

6. The claimant has not been under a disability, as defined in the Social Security Act, since April 20, 2009, the date the application was filed.

AR at 27-39.

VI. ISSUES ON APPEAL

The principal issues on appeal are:

1. Whether the ALJ erred in interpreting the opinions of Plaintiff's treating physician Rod Thompson, M.D., and examining physician Florencio Pangilinan, M.D.?
2. Whether the ALJ erred in assessing Plaintiff's credibility?

Dkt. 17.

VII. DISCUSSION

A. The ALJ Erred in Assessing the Opinions of Drs. Thompson and Pangilinan.

Plaintiff assigns error to the ALJ's reasoning with regard to the opinions of Drs. Thompson and Pangilinan. The Court will first address the disputes regarding Dr. Thompson's opinions, and then turn to consider the opinion of Dr. Pangilinan.

1 1. *Dr. Thompson's 2008 Opinion.*

2 Dr. Thompson completed a form evaluation regarding Plaintiff's ability to work in
3 December 2008. AR at 558-59. In response to a question asking whether Plaintiff had any
4 conditions that require special work accommodations, Dr. Thompson indicated that she has
5 limited ambulation and left hip pain, as documented in an MRI showing bursitis. AR at 558.
6 The following question asked whether those conditions limit Plaintiff's ability to work, and Dr.
7 Thompson answered "yes" and indicated that the specific limitations caused were "limit
8 walking," and that she should be limited to working 1-10 hours per week. *Id.* The next
9 question asked about whether the condition would affect Plaintiff's ability to prepare for work
10 and look for work, and Dr. Thompson again answered "yes," and indicated that she could
11 spend a maximum of 30 minutes walking, and should be limited to 1-10 hours per week of
12 preparing or looking for work. *Id.* Dr. Thompson also indicated that Plaintiff could carry up to
13 five pounds frequently and ten pounds occasionally. *Id.* Dr. Thompson did not indicate how
14 long he expected Plaintiff's condition to likely limit her ability to work, look for work, or train
15 to work: the form asked him to quantify this answer in a number of weeks or months, or to
16 indicate that Plaintiff's condition was permanent. AR at 559. Dr. Thompson circled "weeks"
17 and "months," writing a question mark between them. AR at 559.

18 The ALJ interpreted Dr. Thompson's duration answer to mean that his opinions
19 regarding Plaintiff's walking limitations were "temporary," and found his opinion overall to be
20 "generally consistent" with findings that Plaintiff is "limited to sedentary work with postural
21 limitations but without manipulative, environmental, communicative, or visual limitations."
22 AR at 36. The ALJ did not explicitly address Dr. Thompson's opinions that Plaintiff should be
23 limited to working 1-10 hours per week, or otherwise explain how this opinion could be
24 consistent with a finding that Plaintiff could perform sedentary work on a full-time basis.

1 The Commissioner defends the ALJ's reasoning on the grounds that it was reasonable
2 for the ALJ to construe Dr. Thompson's opinion as failing to meet the 12-month duration
3 requirement, because Dr. Thompson indicated that he did not know how many weeks or
4 months Plaintiff's limitations would persist. While the ALJ's interpretation is certainly not the
5 only reasonable interpretation of Dr. Thompson's opinion, Plaintiff has failed to establish that
6 it was unreasonable. *See Morgan v. Comm'r of the Social Sec. Admin.*, 169 F.3d 595, 599 (9th
7 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it is the
8 ALJ's conclusion that must be upheld.")

9 The Commissioner presumably believes that because Dr. Thompson's opinion cannot
10 support a disability finding because it addresses only "temporary" limitations, the ALJ's error
11 in finding Dr. Thompson's opinion "consistent" with the State agency opinion that Plaintiff can
12 perform sedentary (full-time) work is harmless. The Court agrees, because even if the ALJ
13 had explicitly addressed Dr. Thompson's opinion that Plaintiff was limited to working no more
14 than 10 hours per week, that opinion could have been nonetheless discounted as limited in
15 duration, as the ALJ discounted other opinions listed on that form. Thus, any error with regard
16 to Dr. Thompson's 2008 opinion had no impact on the ultimate disability determination. *See*
17 *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012).

18 2. *Dr. Thompson's 2011 Interrogatory Answers.*

19 Plaintiff also assigns error to the ALJ's assessment of Dr. Thompson's subsequent
20 interrogatory answers: in March 2011, Dr. Thompson indicated that Plaintiff's severe left
21 ventricular dysfunction (as shown in a February 2010 echocardiogram) was medically
22 equivalent to Listing 4.05 (recurrent arrhythmias). AR at 698. The ALJ noted that opinion
23 (AR at 36), but discounted it on the basis of inconsistent subsequent cardiac testing showing
24 "significantly improved left ventricular functioning." AR at 36 (citing AR at 731 (March 2011

1 test results indicating an improvement since April 2010)). According to the ALJ, Plaintiff's
 2 "heart conditions do not impose limitations beyond a sedentary exertional level." AR at 36.
 3 The ALJ cites no evidence to support this conclusion. *Id.*

4 Plaintiff contends that the ALJ erred in disregarding Dr. Thompson's opinion regarding
 5 medical equivalence and finding (without evidentiary support) that any limitations caused by
 6 her cardiac condition were consistent with sedentary work. Dkt. 17 at 9-10. The
 7 Commissioner does not respond to this portion of the Plaintiff's argument, instead defending
 8 an unchallenged aspect of Dr. Thompson's interrogatory answers. *See* Dkt. 18 at 10-12; Dkt.
 9 19 at 5-6.³ Accordingly, the Court construes the Commissioner's failure to respond as a
 10 concession that the ALJ erred in discounting Dr. Thompson's interrogatory answer on the basis
 11 of an unsupported interpretation of the medical evidence. Dr. Thompson's interrogatory
 12 answer does not, however, identify any particular limitations caused by Plaintiff's cardiac
 13 condition, but merely opines as to medical equivalence. AR at 698. Thus, even if Dr.
 14 Thompson's interrogatory answer was credited, it is not clear that Plaintiff is necessarily
 15 disabled. *See Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). On remand, the ALJ
 16 shall reconsider Dr. Thompson's interrogatory answer regarding Plaintiff's cardiac condition at
 17 step three and in assessing Plaintiff's RFC and, if necessary, obtain medical expert testimony.

18 3. *Dr. Pangilinan's Opinion*

19 Dr. Pangilinan performed a consultative physical examination of Plaintiff in February
 20 2006, ultimately opining that

21 ³ Though Plaintiff acknowledges that she did not challenge the ALJ's assessment of Dr.
 22 Thompson's interrogatory answers regarding mental functioning in her opening brief, she
 23 responds to the Commissioner's defense and argues that the ALJ's assessment was erroneous.
 24 Dkt. 19 at 5-6. Because this issue was not raised in the Opening Brief, but curiously addressed
 for the first time in the Commissioner's Response, the Court will not address it. *See Zango,*
Inc. v. Kaspersky Lab, Inc., 568 F.3d 1169, 1177 n.8 (9th Cir. 2009) ("[A]rguments not raised
 by a party in an opening brief are waived.")

1 she can frequently lift and/or carry 10 pounds, stand and/or walk at least 2 hours
2 in an 8-hour workday. [S]itting, pushing and/or pulling at least 2 hours in an 8-
3 hour workday, periodically alternating sitting and standing to relieve left hip
4 lipoma discomfort. No limitations, with the upper extremities. She can climb
ramps/stairs, occasionally balance. Can kneel frequently, occasionally crawl.
No limitations in stooping. No manipulative limitations, nor visual
(corrected)/communicative limitations.

5 AR at 278. The ALJ considered Dr. Pangilinan's opinion, and interpreted it to be consistent
6 with "sedentary work with periodic alternating of sitting and standing." AR at 36. The ALJ
7 also indicated that he gave more weight to more recent medical opinions, specifically the
8 opinions of Dr. Thompson. *Id.*

9 Plaintiff argues that the ALJ erred in construing Dr. Pangilinan's opinion to mean that
10 even though she can only sit "at least two hours" per day, she can nonetheless perform
11 sedentary work with a sit/stand option⁴, because sedentary work requires the ability to sit for a
12 total of sit for six out of eight hours. Dkt. 17 at 7 (citing Social Security Ruling ("SSR") 96-
13 9p, 1996 WL 374185, at *3 (Jul. 2, 1996) (defining "sedentary work" to generally require
14 about six hours of sitting per workday, and no more than about two hours of walking/standing
15 per day)).

16 Without addressing the specific discrepancies identified by Plaintiff, or disputing the
17 definition of "sedentary work" as found in SSR 96-9p, the Commissioner contends that the
18 ALJ's interpretation of Dr. Pangilinan's opinion is "reasonable," arguing that "Plaintiff's own
19 interpretation of the evidence does not undermine this conclusion or provide a reason to
20 overturn the ALJ's determination." Dkt. 18 at 14. While the Commissioner correctly
21 summarizes the law generally, she does not apply it to the facts of this case: she does not
22 analyze why *in this case* it would be reasonable to interpret an opinion stating that Plaintiff can

23 ⁴ The Court notes that though the ALJ indicated that the limitations identified in Dr.
24 Pangilinan's opinion were consistent with sedentary work with a sit/stand option, the ALJ did
not include a sit/stand option in his RFC assessment. *See* AR at 31-32, 36.

1 sit for at least two hours a day as consistent with a finding that Plaintiff can perform sedentary
2 work, which generally requires at least six hours a day of sitting. Simply stating that an
3 interpretation is reasonable does not make it so. Though an argument could be made regarding
4 Dr. Pangilinan's use of the phrase "at least," which may arguably suggest that Plaintiff's
5 maximum capacity is at least somewhat higher than indicated, the Commissioner advanced no
6 such argument.

7 Furthermore, to the extent that the Commissioner argues that the ALJ properly
8 discounted Dr. Pangilinan's opinion due to inconsistencies with other opinions, specifically Dr.
9 Thompson's, the ALJ himself did not explicitly rely on inconsistencies or identify any
10 particular inconsistencies between the opinions. He stated that he gave "greater weight" to
11 "more recent medical source opinions regarding the claimant's physical abilities and
12 functioning, including the opinion of [Dr. Thompson]," though he did not fully credit Dr.
13 Thompson's 2008 opinion — which indicated that Plaintiff could not work full-time due to a
14 walking limitation that would last an unspecified number of weeks/months — and Dr.
15 Thompson's 2011 interrogatory answers do not address any physical limitations whatsoever.
16 Thus, on remand the ALJ shall reconsider the opinion of Dr. Pangilinan in light of the more
17 recent medical opinions regarding Plaintiff's physical limitations and, if necessary, obtain
18 medical expert testimony.

19 B. The ALJ Did Not Err in Assessing Plaintiff's Credibility.

20 Plaintiff argues that the ALJ erred in discounting the credibility of her testimony
21 regarding the limiting effects of her hip, back, and neck pain, due to a misapprehension of the
22 medical record. Dkt. 17 at 13. She also argues that the ALJ erred in discounting her testimony
23 regarding limitations caused by diabetes due to her failure to comply with treatment, and in
24 discounting her testimony regarding limitations caused by mental impairments due to failure to

1 pursue treatment. Dkt. 17 at 13-15. Plaintiff does not address other factors considered by the
2 ALJ in reaching his adverse credibility determination, including inconsistent daily activities
3 and work history. *See* AR at 34-35.

4 *1. Hip, Back, and Neck Pain*

5 The ALJ found that the medical record failed to support the existence of medically
6 determinable impairments that caused limitations in standing and walking; any limitations
7 caused by left hip bursitis were only temporary, and the more recent complaints were
8 determined to be caused by poorly controlled diabetes. AR at 34. The ALJ found that though
9 Plaintiff's impairments prevented her from being able to stand and walk for "prolonged periods
10 of time," the medical evidence did not corroborate Plaintiff's self-reported inability to sit for a
11 "full workday with normal breaks to stretch her legs." AR at 35. The ALJ also noted that the
12 medical record fails to support Plaintiff's allegations of any medically determinable
13 impairment that would cause upper extremity limitations. *Id.*

14 Though Plaintiff cites evidence of self-reported symptoms related to standing, walking,
15 and arm pain, she has not shown that the ALJ overlooked evidence of any particular medically
16 determinable impairment. The ALJ did not err in finding that Plaintiff's testimony alone is not
17 sufficient to show the existence of a medically determinable impairment. *See Ukolov v.*
18 *Barnhart*, 420 F.3d 1002, 1004-05 (9th Cir. 2005). Furthermore, the ALJ explained that he
19 accounted for any limitations caused by pain that were supported by the record (AR 34-35),
20 and Plaintiff has not shown that he erred in doing so.

21 *2. Lack of Compliance with Diabetes Treatment*

22 One of the ALJ's primary reasons for discounting Plaintiff's credibility was her failure
23 to comply with her diabetes treatment: "The record shows inconsistent compliance with
24 diabetic diet, prescribed medications, blood sugar monitoring, and recommendations to

1 exercise.” AR at 34. According to the ALJ, “[t]he record also suggests that improved
2 compliance with recommended diet and prescribed medications would help to stabilize blood
3 sugar levels, which, in turn, would likely diminish many symptoms.” *Id.*

4 Plaintiff does not dispute that she did not fully comply with her treatment regimen for
5 diabetes, but argues that the ALJ should have considered her reasons for failing to comply and
6 whether compliance would have restored her ability to work. Dkt. 17 at 15. Though Plaintiff
7 points to some evidence that two of her diabetes medications were not covered by her
8 insurance (see AR at 474, 524), the record is replete with other references to Plaintiff’s failure
9 to monitor blood sugars as suggested (AR at 534, 661, 672, 676, 705, 748), failure to maintain
10 her recommended diet and exercise (AR at 528, 530-31, 533, 687, 748), failure to take
11 medications as prescribed (AR at 525, 532, 673), and failure to follow up as recommended
12 (AR at 531, 670). Plaintiff has not offered an explanation to the Court for these failures to
13 comply with specific treatment, and the medical record contains no such explanation. Thus,
14 the ALJ did not err in finding that Plaintiff’s failure to comply with her diabetes treatment
15 regimen undermined her credibility. *See Molina*, 674 F.3d at 1113-14.

16 3. *Lack of Mental Health Treatment*

17 The ALJ noted that Plaintiff’s physical symptoms are to some degree impacted by her
18 lack of treatment for mental symptoms: he noted that she has not “pursued mental health
19 counseling for help or support in dealing with anxiety and situational stresses, which the
20 overall record suggests may affect blood sugar levels to some extent.” AR at 34. The ALJ
21 went on to explain “despite times of heightened stress and symptoms, the claimant has been
22 able to continue to care for her son and her home, and she has not pursued mental health
23 counseling for help in dealing with stress, anxiety, or depression.” AR at 35. The ALJ further
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1 noted that Plaintiff's mental symptoms may be limiting, but they do not "preclude work on a
2 regular and ongoing basis." *Id.*

3 Plaintiff has failed to establish an error in the ALJ's reasoning regarding mental
4 limitations. The ALJ provided a number of reasons to discount Plaintiff's testimony regarding
5 disabling mental limitations, including general improvement with medication (and a failure to
6 pursue additional treatment in the form of counseling during times of heightened stress) and
7 inconsistent daily activities. AR at 35. Plaintiff has failed to show that these reasons are not
8 clear and convincing, instead focusing on what she perceives to be an underlying error in the
9 legal standard employed by the ALJ in evaluating her symptoms in the first place. Dkt. 19 at
10 8-10. But Plaintiff acknowledges that the ALJ engaged in the two-step process for evaluating
11 credibility: at the first step, he determined that Plaintiff's impairments could reasonably be
12 expected to produce the symptoms alleged. Dkt. 19 at 9 (citing AR at 33). But Plaintiff fails
13 to recognize that at the second step, the ALJ may reject a claimant's testimony about the
14 severity of her symptoms upon providing clear and convincing reasons to do so. *See*
15 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). Plaintiff has not shown that the
16 reasons provided by the ALJ to discount Plaintiff's testimony regarding mental symptoms are
17 not clear and convincing, and thus has not identified an error in the ALJ's decision in this
18 regard.

19 4. *Medication Side Effects*

20 Though Plaintiff argues that the ALJ failed to account for medication side effects when
21 assessing her RFC, she fails to acknowledge that the ALJ specifically noted her medication
22 side effects (AR at 33) and found that the side effects she complained of do not preclude "less
23 strenuous" work, assuming she is compliant with medications and treatment. AR at 34.
24 Particularly in light of the ALJ's proper adverse credibility finding, the ALJ's consideration of

1 medication side effects is sufficient. *See Roquemore v. Comm’r of Social Sec. Admin.*, 374
2 Fed. Appx. 693, 695 (9th Cir. 2010) (rejecting a claimant’s argument that an ALJ was required
3 to discuss medication side effects, even though the ALJ properly discounted the claimant’s
4 credibility, where the claimant “fails to identify any objective evidence of side effects. He
5 points only to his own subjective claims of drowsiness and decreased concentration. Nothing
6 in the record suggests that Roquemore’s ability to work was affected by his medications.
7 Therefore, the ALJ was not required to include a discussion of side effects.”).

8 VIII. CONCLUSION

9 For the foregoing reasons, the Court recommends that this case be REVERSED and
10 REMANDED to the Commissioner for further proceedings not inconsistent with the Court’s
11 instructions. A proposed order accompanies this Report and Recommendation.

12 DATED this 21st day of August, 2013.

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14 JAMES P. DONOHUE
15 United States Magistrate Judge
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